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July 1, 2019

Via ECF

The Honorable Paul A. Engelmayer
United States District Judge, S.D.N.Y.
Thurgood Marshall United States Courthouse
40 Foley Square, Courtroom 1305
New York, New York 10007

Re: *Capri Sun GmbH v. American Beverage Corporation*; 1:19-cv-01422 (PAE)
Clarification About Nature of Trademark Functionality Briefing

Dear Judge Engelmayer:

We represent Plaintiff Capri Sun GmbH (“Capri Sun”) in the above-referenced civil action. On June 26, 2019, Capri Sun and Defendant American Beverage Corporation (“ABC”) filed a joint letter with the Court, seeking a determination about whether ABC may assert trademark functionality as a defense in this case, in light of a “no-challenge” provision in a settlement agreement emanating from a prior litigation with ABC’s predecessor-in-interest. *See* Dkt. 31 at 1. On June 28, 2019, the Court issued an Order, directing “the parties to file a letter, by July 1, 2019, clarifying the nature of the anticipated motion and the identity of the moving party.” Dkt. 31 at 8.

After meeting-and-conferring on this issue, the parties agree that Capri Sun is the movant. Regarding the nature of Capri Sun’s anticipated motion, in light of the no-challenge provision referenced above, Capri Sun anticipates seeking: (i) an Order from this Court, pursuant to FED. R. CIV. P. 12(f)(1), striking all references in ABC’s Affirmative Defenses to the alleged functionality of Capri Sun’s pouch-design trademark in suit (the “Pouch Trademark”), and (ii) a Protective Order, pursuant to FED. R. CIV. P. 26(c)(1)(D), forbidding ABC from seeking any discovery on, or otherwise inquiring into, the matter of whether the Pouch Trademark is allegedly functional.

We thank the Court for its time and consideration.

Respectfully submitted,

/s/ A. John P. Mancini
A. John P. Mancini

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cc: All counsel of record (*via ECF*)